

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.261 through 455B.274 and 2008 Iowa Acts, House File 2672, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 50, "Scope of Division—Definitions—Forms—Rules of Practice," and Chapter 55, "Aquifer Storage and Recovery: Criteria and Conditions for Authorizing Storage, Recovery, and Use of Water," Iowa Administrative Code.

The purpose of this rule making is to include the fee schedule for the water use permit program in the Iowa Administrative Code. The previous water use permit fee schedule was rescinded in August 2008. Iowa Code section 455B.105(11) allows the Environmental Protection Commission to adopt by rule a schedule of fees for permit applications as well as a schedule of fees to be assessed for the management of Iowa's water use permitting program. In determining the fee schedules, the Commission shall consider the cost of administration of permits, review of applications and compliance with the terms of the permits, and the relative benefits to the applicant and to the public of permit review, issuance, and monitoring compliance.

By statute, water use permits are issued for up to ten years. Appropriations from the General Fund have been used to fund issuance of the water use permits and related costs at approximately \$292,600 for state fiscal year 2009.

The General Fund appropriations do not cover the cost of the program as envisioned in the late 1960s, nor do they cover funding for the additional requirements placed on the Department to administer this program during the ensuing years, such as: priority water allocation implementation during droughts; implementation of water conservation practices; and well interference compensation resolution. Many permit decisions must be made with available hydrogeological data that is inadequate. Well interference cases often require that the Department meet with appropriate individuals to assess hydrogeologic, engineering, and environmental impacts of contested water allocation issues. Historically, there has been insufficient funding to meet these needs.

During the last legislative session, the Legislature established a dedicated fund and authorized the Department to collect up to \$500,000 in permit fees to implement this program. Each year, the Environmental Protection Commission will be asked to set the fee based on the budgeted expenses for that year minus the amount of any unused funds from the previous year, with general fund appropriations that are assumed to remain at approximately \$292,600 each fiscal year. The permit fee rule for the aquifer storage and recovery well permitting program will be revised and moved from 567—Chapter 55 to 567—Chapter 50.

Any interested person may file written comments on the proposed amendments on or before Friday, December 12, 2008. Written comments or questions regarding the proposed amendments should be directed to Diane Moles, Water Supply Engineering Section, Iowa Department of Natural Resources, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309-4611; via fax at (515)725-0348; or via E-mail at diane.moles@dnr.iowa.gov.

Oral or written comments will also be accepted at the public hearings that will be held on the following dates:

Wednesday, December 3, 2008	9 a.m.	Onawa Community Center Kelly Hall 320 Tenth Street Onawa, Iowa
Friday, December 5, 2008	10 a.m.	Iowa City Public Library 123 S. Linn Street Iowa City, Iowa (Parking is available in the ramp at the corner of Linn and Burlington; the library will validate the parking stub for one hour.)
Thursday, December 11, 2008	10 a.m.	Wallace Building Auditorium 502 E. Ninth Street Des Moines, Iowa (Parking is available in the ramp west of the Wallace Building or in the lot east of the Capitol.)

At each hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule making.

Any persons who intend to attend a public hearing and have special requirements, such as hearing or mobility impairments, should contact the Department of Natural Resources to advise of specific needs.

These amendments are intended to implement Iowa Code sections 455B.105 and 455B.261 through 455B.274 and 2008 Iowa Acts, House File 2672.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 50.4(2):

50.4(2) Fees.

a. Application fee. An application to the department for a new permit, modification of an existing permit, or registration of a minor nonrecurring use of water must be accompanied with the fee listed in the table below. These fees are nonrefundable and are not transferable. For any single application, if more than one fee in the table below applies, only the higher fee is required. The fees become effective on July 1, 2009.

Application Description	Form	Fees, in dollars
(1) To apply for a new permit to withdraw or divert water	16 (542-3106)	\$350
(2) To renew an existing permit	542-1470	\$0
(3) To modify an existing permit to either add a new source or increase the amount or rate of water withdrawn or diverted from a source or sources	16 (542-3106)	\$350
(4) To modify the conditions of an existing permit which are not described in Item 3 of this table (see above)	16 (542-3106)	\$0
(5) To apply for an aquifer storage and recovery permit or a protected source designation	N/A	\$700
(6) To apply for a permit to store water	18 (542-3109)	\$75
(7) To register a minor nonrecurring use of water	20 (542-3112)	\$75

b. Annual permit fee. In addition to the application fee, there is an annual permit fee for a water use permit or an aquifer storage and recovery permit. The annual fee shall be based on the number of active permits. Each permit holder shall pay the same annual fee. The fee will not be prorated and is nonrefundable. The annual permit fee is due December 1 of each year, beginning with December 1, 2009. The department will provide an annual fee notice to each permittee at least 60 days prior to the fee due date. An additional fee of \$100 will be imposed if the fee is not received by December 1. Failure to remit the fee by January 1 may result in the cancellation of the permit.

(1) There is no annual fee for a water storage permit (see (6) of table at paragraph 50.4(2) “a”) or for a minor nonrecurring water use registration (see (7) of table at paragraph 50.4(2) “a”).

(2) The annual fee shall be based on the costs for administering the water use permitting program for the previous calendar year and on the budget for the next fiscal year. The department will review the annual permit fee each year and adjust the fee as necessary to cover all reasonable costs required to develop and administer the water use permitting program. Permit holders that have paid an application fee after December 1, but prior to November 30, will not be required to pay an annual fee until December 1 of the following year. If an applicant remits an annual fee for the 12-month period beginning December 1 and then later submits an application fee for a permit modification, the applicant will be refunded the lesser of the fees. The department shall request commission approval of the amount of the annual fee no later than September of each year.

ITEM 2. Rescind and reserve subrule **55.5(2)**.